

ANDO *et al.*, SN 10/020,116
Amdt. dated 05/09/2005
Reply to OA mailed 02/09/2005

Dkt. 500.40994X00/E6320-01EW
Page 6

REMARKS

This Amendment is responsive to the Office Action Identified above, and is further responsive in any other manner indicated below.

NON-ENTRY OF INFORMATION DISCLOSURE STATEMENT - TRAVERSED

Applicant's previously-submitted Information Disclosure Statement has been refused entry, apparently on a basis that Applicant utilized a listing/format other than a Form PTO-1449 to list references. **Strong traversal is appropriate, as there is no basis for denying entry.** More particularly, MPEP §609 states, "Applicants are **encouraged** to use the USPTO forms when preparing an information disclosure statement." The term "**encouraged**" does not mean "**mandatory**," and **there is no authorization within the MPEP or elsewhere for denying entry** when a different (*i.e.*, non-1449) type of listing/format is used. For convenience and to obviate this issue, submitted herewith is a Form PTO-1449 listing the single reference, and Applicant respectfully requests return of an Examiner-initialed copy indicating that the Information (*i.e.*, the reference) has been considered. Applicant respectfully thanks the Examiner in advance for such initialing/consideration.

DISCLOSURE OBJECTION(S)/DISCLOSURE ADJUSTED

With regard to the "Specification" section on page 2 of the Office Action, appropriate locations of Applicant's specification have been amended to delete erroneous mention of reference numeral(s). As the following is believed to obviate

ANDO *et al.*, SN 10/020,116
Amdt. dated 05/09/2005
Reply to OA mailed 02/09/2005

Dkt. 500.40994X00/E6320-01EW
Page 7

all the listed concerns, reconsideration and withdrawal of the objection to the drawings are respectfully requested.

PENDING CLAIMS

Claims 1-7 were pending, under consideration and subjected to examination in the Office Action. Appropriate claims have been amended, canceled and/or added (without prejudice or disclaimer) in order to adjust a clarity and/or focus of Applicant's claimed invention. That is, such changes are unrelated to any prior art or scope adjustment and are simply refocused claims in which Applicant is present interested. At entry of this paper, Claims 1-7 remain pending for further consideration and examination in the application.

CLAIM OBJECTIONS OBIATED VIA CLAIM AMENDMENT

Claims 2, 3 and 5-7 have been objected to because of the Office Action concerns listed within the "Claim Objections" section on page 2 of the Office Action. As amendments have been made where appropriate in order to address each of the Office Action listed concerns, reconsideration and withdrawal of the claim objection are respectfully requested.

§101 REJECTION RE NON-STATUTORY SUBJECT MATTER - TRAVERSED

Claims 4 and 5 have been rejected under 35 USC §101 as being directed to non-statutory subject matter. Applicant respectfully traverses. The last paragraph of 35 USC §112 specifically states:

ANDO *et al.*, SN 10/020,116
Amdt. dated 05/09/2005
Reply to OA mailed 02/09/2005

Dkt. 500.40994X00/E6320-01EW
Page 8

An element in a claim for a combination may be expressed as a means or step for performing a specified function without the recital of structure, material, or acts in support thereof ...

Applicant respectfully submits that the rejected claims are written in a proper means-plus-function type of format. Based upon the foregoing, reconsideration and withdrawal of the §101 rejection of the above-referenced claims are respectfully requested.

REJECTION UNDER 35 USC §102

The 35 USC §102 rejection of Claims 1-7 as being anticipated by Deibboll *et al.* (US 5,886,643 A) is respectfully traversed. Such rejection has been rendered obsolete by the present clarifying amendments to Applicant's claims, and accordingly, traversal arguments are not appropriate at this time. However, Applicant respectfully submits the following to preclude renewal of any such rejection against Applicant's clarified claims.

All descriptions of Applicant's disclosed and claimed invention, and all descriptions and rebuttal arguments regarding the applied prior art, as previously submitted by Applicant in any form, are repeated and incorporated herein by reference. Further, all Office Action statements regarding the prior art rejections are respectfully traversed. As additional arguments, Applicant respectfully submits the following.

At the outset, as to the requirements to support a rejection under 35 USC §102, reference is made to the decision of *In re Robertson*, 49 USPQ2d 1949 (Fed. Cir. 1999), wherein the court pointed out that anticipation under 35 USC §102

ANDO *et al.*, SN 10/020,116
Amdt. dated 05/09/2005
Reply to OA mailed 02/09/2005

Dkt. 500.40994X00/E6320-01EW
Page 9

required that each and every element as set forth in the claim is found, either expressly or inherently described in a single prior art reference. Moreover, the Court pointed out that inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.

Therefore, in order to properly support a §102 anticipatory-type rejection, any applied art reference must disclose each and every limitation of any rejected claim. The applied art does not adequately support a §102 anticipatory-type rejection because, at minimum, such applied art does not disclose (or suggest) the following discussed limitations of Applicant's claims.

Applicant's disclosed and claimed invention is directed toward arrangements (e.g., method, apparatus) which automatically effect real-time determination of the relative locations of network appliances with respect to one another on a network. More particularly, where a plurality of appliances are mutually connected through a network, Applicant's invention utilizes time difference data of differing appliances to determine relative locations of the appliances on the network.

As further explanation, as a state of an appliance on the network changes over time, that appliance may broadcast information regarding its changed state. Other ones of appliances on the network may receive and compile such changed state information and the time when the state changes have been detected as having occurred by the appliance. Applicant's invention may then compare such times between differing ones of the appliances, and use time differences to then infer each appliances relative location on the network.

ANDO *et al.*, SN 10/020,116
Amdt. dated 05/09/2005
Reply to OA mailed 02/09/2005

Dkt. 500.40994X00/E6320-01EW
Page 10

As one simplistic example, if: appliance 1's stored info indicates that appliance X's changed state occurred at 12:02:45; appliance 2's stored info indicates that appliance X's changed state occurred at 12:02:47; and, appliance 3's stored info indicates that appliance X's changed state occurred at 12:02:53, then it can be inferred that appliance 1 is the closest to appliance X (*i.e.*, it got the change info first), appliance 2 is the next closest, and appliance 3 is the farthest from appliance X. By paying attention to the degree of relative time differences, one can even infer whether two appliances are located within the same room (see discussions in Applicant's disclosure).

In terms of distinguishing claim language, Applicant's claims (*e.g.*, independent Claim 1) recite:

receiving state information indicative of operating state changes of the appliances constituted of a distributed computer through said network; calculating an occurrence time difference from occurrence times when the state changes have been detected as having occurred by differing ones of the appliances, in accordance with occurrence time information indicative of occurrence times of the state changes included in the state information; and acquiring a distance between the positions, where the appliances occur the state changes, from the calculated occurrence time difference.

Other ones of Applicant's claims have similar or analogous features/limitations.

Turning to rebuttal of the previously applied reference, Diebboll *et al.* would not support a §102 anticipatory-type rejection (or a §103 obviousness-type rejection) of Applicant's claims in that Diebboll *et al.*'s arrangement instead looks at network traffic records (*e.g.*, number of occurrences of traffic) for discovering network topology. While Diebboll *et al.*'s traffic records does store some type of time

ANDO *et al.*, SN 10/020,116
Amdt. dated 05/09/2005
Reply to OA mailed 02/09/2005

Dkt. 500.40994X00/E6320-01EW
Page 11

information, Diebboll *et al.*'s arrangement never utilizes time differences to discover topology.

In addition to the foregoing, the following additional remarks from Applicant's foreign representative are also submitted in support of traversal of the rejection and patentability of Applicant's claims.

According to the present invention, a physical distance between nodes or appliances is obtained from the processing on the basis of times when the state changes occur among the appliances, and more specifically, depending on the time in which of the appliances occurs a state change first, and then the next, and so on (see, e.g., page 5, line 14-page 6, line 3 and page 16, line 18-page 17, line 14 of the specification).

In contrast, Diebboll *et al.* measures a communication traffic between the nodes and determines a system configuration such that the number of routers becomes reduced between the nodes or a logical distance between nodes becomes closer. The feature of Diebboll *et al.* is quite different from the present invention, referring to, e.g., Col. 2, lines 1-18.

As a result of all of the foregoing, it is respectfully submitted that the applied art would not support a §102 anticipation-type rejection of Applicant's claims. Accordingly, reconsideration and withdrawal of such §102 rejection, and express written allowance of all of the rejected claims, are respectfully requested.

ANDO *et al.*, SN 10/020,116
Amdt. dated 05/09/2005
Reply to OA mailed 02/09/2005

Dkt. 500.40994X00/E6320-01EW
Page 12

RESERVATION OF RIGHTS

It is respectfully submitted that any and all claim amendments and/or cancellations submitted within this paper and throughout prosecution of the present application are without prejudice or disclaimer of any scope or subject matter. Further, Applicant respectfully reserves all rights to file subsequent related application(s) (including reissue applications) directed to any/all previously claimed limitations/features which have been subsequently amended or cancelled, or to any/all limitations/features not yet claimed, *i.e.*, Applicant continues (indefinitely) to maintain no intention or desire to dedicate or surrender any limitations/features of subject matter of the present application to the public.

EXAMINER INVITED TO TELEPHONE

The Examiner is invited to telephone the undersigned at the local D.C. area number 703-312-6600, to discuss an Examiner's Amendment or other suggested action for accelerating prosecution and moving the present application to allowance.

CONCLUSION

In view of the foregoing amendments and remarks, Applicant respectfully submits that the claims listed above as presently being under consideration in the application are in condition for allowance. Accordingly, early allowance of such claims is respectfully requested.

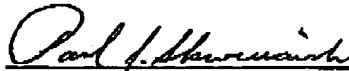
This Amendment is being filed within the shortened statutory period for response set by the 9 February 2005 Office Action, and therefore, no Petition or

ANDO *et al.*, SN 10/020,116
Amdt. dated 05/09/2005
Reply to OA mailed 02/09/2005

Dkt. 500.40994X00/E6320-01EW
Page 13

extension fee is required. To whatever other extent is actually necessary, Applicant respectfully petitions the Commissioner for an extension of time under 37 CFR §1.136. No additional claims fees are required for entry of this paper. Please charge any actual required fee to ATS&K Deposit Account No. 01-2135 (as Case No. 500.40994X00).

Respectfully submitted,



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Attachment:
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